

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HEIGHT STREET SKILLED CARE,
LLC,

Plaintiff,

v.

LIBERTY MUTUAL INSURANCE
COMPANY, et al.,

Defendants.

Case No. 1:21-cv-01247-JLT-CDB

SCHEDULING ORDER (Fed. R. Civ. P. 16)

Rule 26 Disclosures: Completed February 2, 2022

Pleading Amendment: January 2, 2024

Discovery Deadlines:

Non-Expert: June 28, 2024

Expert: September 9, 2024

Mid-Discovery Status Conf.: March 20, 2024

Non-Dispositive Motion Deadlines:

Filing: September 20, 2024

Hearing: October 18, 2024, 10:30 a.m.

Dispositive Motion Deadlines:

Filing: November 8, 2024

Hearing: December 17, 2024, 8:30 a.m.

Pre-Trial Conference: February 10, 2025, 1:30 p.m.

2500 Tulare Street, Fresno, CA

Trial: April 8, 2025, 8:30 a.m.

2500 Tulare Street, Fresno, CA

7 days

This action was removed from state court to this Court on August 16, 2021. (Doc. 1).

Plaintiff Height Street Skilled Care alleges that Defendants Liberty Mutual Insurance Company and West American Insurance Company have breached their insurance policy by denying coverage of

1 various items of damage, have taken unreasonable coverage positions, and engaged in bad faith tactics
2 in connection with coverage issues implicated by a major fire at Plaintiff's nursing home and skilled
3 care facility. Plaintiff raises claims for breach of contract, breach of implied covenant of good faith
4 and fair dealing, and unfair business practices.

5 The parties convened via Zoom videoconference for a scheduling conference before the Court
6 on November 1, 2023. Peter Scott appeared on behalf of Plaintiff and Nicholas Boos appeared on
7 behalf of Defendants.

8 **I. Fictitiously-Named Defendants**

9 All claims as to "Doe" Defendants, including any counterclaims and cross-claims, are hereby
10 **Dismissed.**

11 **II. Rule 26 Disclosures and Pleading Amendment**

12 The parties aver that they exchanged their Rule 26 disclosures on **February 2, 2022**. Any
13 motions to amend the pleadings must be filed by **January 2, 2024**. The parties are advised that filing
14 a motion and/or stipulation requesting leave to amend the pleadings does not reflect on the propriety of
15 the amendment or imply good cause to modify the existing schedule, if necessary. All proposed
16 amendments must (A) be supported by good cause pursuant to Fed. R. Civ. P. 16(b) if the amendment
17 requires any modification to the existing schedule, *see Johnson v. Mammoth Recreations, Inc.*, 975
18 F.2d 604, 609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an amendment
19 is not (1) prejudicial to the opposing party, (2) the product of undue delay, (3) proposed in bad faith, or
20 (4) futile, *see Foman v. Davis*, 371 U.S. 178, 182 (1962).

21 **III. Discovery Plan and Cut-Off Date**

22 The parties are ordered to complete all discovery pertaining to non-experts on or before **June**
23 **28, 2024**, and all discovery pertaining to experts on or before **September 9, 2024**.

24 The parties are directed to disclose all expert witnesses, in writing, on or before **July 12, 2024**,
25 and to disclose all rebuttal experts on or before **August 12, 2024**. The written designation of retained
26 and non-retained experts shall be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and
27 shall include all information required thereunder. Failure to designate experts in compliance with this
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1 order may result in the Court excluding the testimony or other evidence offered through such experts
2 that are not disclosed pursuant to this order.

3 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
4 experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
5 included in the designation. Failure to comply may result in the imposition of sanctions, which may
6 include striking the expert designation and preclusion of expert testimony.

7 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
8 disclosures and responses to discovery requests will be strictly enforced.

9 A mid-discovery status conference is scheduled for **March 20, 2024**, at 10:00 a.m. before
10 Magistrate Judge Christopher D. Baker. Counsel SHALL file a joint mid-discovery status conference
11 report no later than **one week before the conference**. Counsel also SHALL lodge the status report via
12 e-mail to CDBorders@caed.uscourts.gov. The joint report SHALL outline the discovery counsel have
13 completed and that which needs to be completed as well as any impediments to completing the
14 discovery within the deadlines set forth in this order. Counsel SHALL discuss settlement and certify
15 in the joint status report (1) that they have met/conferred regarding settlement, and (2) proposed dates
16 for convening a settlement conference with Magistrate Judge Baker (or an unassigned magistrate in
17 the event the parties later consent to magistrate judge jurisdiction).

18 **IV. Pre-Trial Motion Schedule / Informal Discovery Dispute Conferences**

19 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
20 than **September 20, 2024**,¹ and heard on or before **October 18, 2024**. The Court hears non-
21 dispositive motions at 10:30 a.m. at the United States District Courthouse in Bakersfield, California
22 before Magistrate Judge Baker.

23 No motion to amend or stipulation to amend the case schedule will be entertained unless it is
24 filed at least one week before the first deadline the parties wish to extend. Likewise, no written
25 discovery motions shall be filed without the prior approval of the Court. A party with a discovery
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27 ¹ Non-dispositive motions related to non-expert discovery SHALL be filed within a
28 reasonable time of discovery of the dispute, but in no event later than 10 days after the expiration of
the non-expert discovery deadline.

1 dispute must first confer with the opposing party in a good faith effort to resolve by agreement the
2 issues in dispute. If that good faith effort is unsuccessful, the moving party promptly shall seek a
3 hearing with all involved parties and Magistrate Judge Baker. For these hearings and at the direction
4 of the Courtroom Deputy Clerk, the Court may direct counsel to appear remotely (via Zoom). For
5 hearings noticed to occur in-person, the Court may permit counsel to appear remotely (via Zoom)
6 provided the Courtroom Deputy Clerk receives a written notice of the request to appear remotely no
7 later than five court days before the noticed hearing date.

8 At least three days before the conference, counsel SHALL file informal letter briefs detailing
9 their positions. The briefs may not exceed 5 pages, excluding exhibits. Counsel must comply with
10 Local Rule 251 with respect to discovery disputes.

11 All dispositive pre-trial motions shall be filed no later than **November 8, 2024**, and heard on or
12 before **December 17, 2024, at 8:30 a.m.** In scheduling such motions, absent consent to Magistrate
13 Judge jurisdiction, counsel SHALL consult the assigned District Judge's general information and
14 calendar accordingly and SHALL comply with Fed. R. Civ. P. 56 and Local Rules 230 and 260.

15 **V. Motions for Summary Judgment or Summary Adjudication**

16 At least 21 days before filing a motion for summary judgment or motion for summary
17 adjudication, the parties SHALL meet, in person or by telephone, to confer about the issues to be
18 raised in the motion.

19 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
20 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
21 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
22 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
23 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

24 The moving party SHALL initiate the meeting and SHALL provide a complete, proposed
25 statement of undisputed facts **at least five days before** the conference. The finalized joint statement
26 of undisputed facts SHALL include all facts that the parties agree, for purposes of the motion, may be
27 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
28 statement of undisputed facts.

1 In the notice of motion, the moving party SHALL certify that the parties have met and
2 conferred as ordered above, or set forth a statement of good cause for the failure to meet and confer.
3 Failure to comply may result in the motion being stricken.

4 **VI. Pre-Trial Conference**

5 **February 10, 2025**, at 1:30 p.m., located at the United States District Courthouse, 2500 Tulare
6 Street, in Fresno, California, before District Judge Jennifer L. Thurston.

7 The parties are ordered to file a Joint Pretrial Statement pursuant to Local Rule 281(a)(2). The
8 parties are further directed to submit a digital copy of their pretrial statement in Word format, directly
9 to District Judge Thurston's chambers, by email at JLTorders@caed.uscourts.gov.

10 Counsels' attention is directed to Rules 281 and 282 of the Local Rules for the Eastern District
11 of California, as to the obligations of counsel in preparing for the pre-trial conference. The Court will
12 insist upon strict compliance with those rules. In addition to the matters set forth in the Local Rules,
13 the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the Court to
14 explain the nature of the case to the jury during voir dire.

15 **VII. Trial Date**

16 **April 8, 2025**, at 8:30 a.m., located at the United States District Courthouse, 2500 Tulare
17 Street, in Fresno, California, before District Judge Jennifer L. Thurston.

18 A. This is a jury trial.

19 B. Counsels' Estimate of Trial Time: 7 days.

20 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
21 California, Rule 285.

22 **VIII. Settlement Conference**

23 The parties SHALL meet and confer and notify the Court prior to the Pre-Trial Conference
24 whether they wish to convene a Settlement Conference. In the event the parties request a Settlement
25 Conference, unless otherwise permitted in advance by the Court, the attorneys who will try the case
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1 shall appear at the settlement conference with the parties and the person or persons having full
2 authority to negotiate and settle the case on any terms² at the conference.

3 Consideration of settlement is a serious matter that requires preparation prior to the settlement
4 conference. Set forth below are the procedures the Court will employ, absent good cause, in
5 conducting the conference.

6 At least twenty-one days before the settlement conference, Plaintiff SHALL submit to
7 Defendant via fax or e-mail, a written itemization of damages and a meaningful³ settlement demand
8 which includes a brief explanation of why such a settlement is appropriate. Thereafter, no later than
9 fourteen days before the settlement conference, Defendant SHALL respond, via fax or e-mail, with an
10 acceptance of the offer or with a meaningful counteroffer which includes a brief explanation of why
11 such a settlement is appropriate.

12 If settlement is not achieved, each party SHALL attach copies of their settlement offers to their
13 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
14 not be filed on the court docket.

15 CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

16 At least five court days prior to the settlement conference, the parties shall submit, directly to
17 Magistrate Judge Baker's chambers by e-mail to CDBOrders@caed.uscourts.gov, a Confidential
18 Settlement Conference Statement. The statement should not be filed with the Clerk of the Court nor
19 served on any other party, although the parties may file a Notice of Lodging of Settlement Conference
20 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
21 settlement conference indicated prominently thereon.

22 ² Insurance carriers, business organizations, and governmental bodies or agencies whose
23 settlement agreements are subject to approval by legislative bodies, executive committees, boards of
24 directors or the like shall be represented by a person or persons who occupy high executive positions in
25 the party organization and who will be directly involved in the process of approval of any settlement
offers or agreements. To the extent possible, the representative shall have authority, if he or she deems
it appropriate, to settle the action on terms consistent with the opposing party's most recent demand.

26 ³ "Meaningful" means the offer is reasonably calculated to settle the case on terms acceptable to
27 the offering party. "Meaningful" does not include an offer which the offering party knows will not be
28 acceptable to the other party. If, however, the offering party is only willing to offer a settlement which
it knows the other party will not accept, this should trigger a recognition the case is not in a settlement
posture and the parties should confer about continuing or vacating the settlement conference via
stipulation.

The Confidential Settlement Conference Statement shall include the following:

A. A brief statement of the facts of the case.

B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on the claims and defenses; and a description of the major issues in dispute.

C. A summary of the proceedings to date.

D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.

E. The relief sought.

F. The party's position on settlement, including present demands and offers and a history of past settlement discussions, offers and demands.

IX. Request for Bifurcation, Appointment of Special Master, or other Techniques to Shorten Trial

None at this time.

X. Related Matters Pending

There are no pending related matters.

XI. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of the Eastern District of California, and to keep abreast of any amendments thereto. The Court requires compliance with these Rules to efficiently handle its increasing case load.

XII. Effect of this Order

The foregoing order represents the best estimate of the court and counsel as to the agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by subsequent status conference.

The dates set in this Order are considered to be firm and will not be modified absent a showing of good cause even if the request to modify is made by stipulation. Stipulations extending the deadlines contained herein will not be considered unless they are accompanied by affidavits or

1 declarations, and where appropriate attached exhibits, which establish good cause for granting the
2 relief requested.

3 Failure to comply with this order may result in the imposition of sanctions.

4 IT IS SO ORDERED.

5 Dated: November 1, 2023


UNITED STATES MAGISTRATE JUDGE